

Remarks

This Amendment is in response to the Office Action dated **March 18, 2009**. The Office Action objected to the Specification; rejected claims 1-7, 10, 12, 14-16, 81-21, 24-29, 31-36, 38-41, 44-56, 59-64, 79, 82, 85, 88, and 91 under 35 USC § 103 over Nuñez (US 5,800,514) in view of Yachia (US Pub. No. 2004/0093065); rejected claims 9, 11, and 13 under 35 USC § 103 over Nuñez in view of Yachia in further view of Schmitt (US 5,383,925); and rejected claims 30, 37, 57, 80, 83, 86, and 89 under 35 USC § 103 over Nuñez in view of Yachia in further view of De Paulis (US 6,352,554).

Claims 1, 30, 32, 49, and 79 are herein amended.

Claims 80, 81, 83, 84, 86, 87, 89, and 90 are herein canceled without prejudice or disclaimer.

In light of the foregoing amendments and following comments, Applicant requests reconsideration.

Claim Objections

The Office Action objected to the Specification, alleging that the added “limitation that ‘said woven portions of said first tubular end, said second tubular end and said bulbous woven section are seamlessly transitioned with continuous warp yarns common to each of said first and second tubular ends said bulbous woven’ was not found in the disclosure.” Page 3.

The aforementioned language in claims 1, 32, 49, and 79 is herein removed without prejudice or disclaimer. Consequently, the objection is moot.

Claim Rejections

The Office Action objected to the Specification; rejected claims 1-7, 10, 12, 14-16, 81-21, 24-29, 31-36, 38-41, 44-56, 59-64, 79, 82, 85, 88, and 91 under 35 USC § 103 over Nuñez in view of Yachia.

Claims 1, 32, 49, and 79 are herein amended to recite, “a flat-woven tubular portion having opposed first and second tubular ends with a contiguous generally spherical bulbous woven section therebetween...”

Claim 1 is further amended to add a comma at the end of the phrase, “said bulbous

woven section having opposed first and second open ends, the first bulbous end being contiguous with said first tubular end.”.

Claim 32 is further amended to correct a typographical error.

Claim 49 is further amended to add additional clarity.

Núñez discloses a “flat-woven implantable tubular prostheses ... which have been continuously woven to form seamless tubular products having gradual changes in diameter along their length...” Column 3, lines 54-58.

Yachia discloses “a device 600 comprising a lining 610 ... that is integral with two stents 615a and b.” Paragraph [0038]. Figure 6 of Yachia is provided below. Yachia further discloses that the “lining ... is formed from a resilient filament ... that has been fashioned into an undulating helix. The filament may be made of spring steel, a super-elastic shape memory alloy such as Nitinol, or a shape memory alloy.” Paragraph [0029].

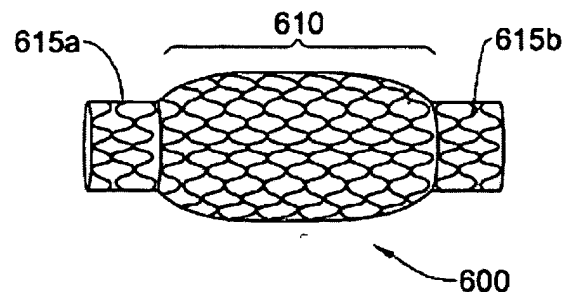


FIG. 6

Neither Núñez nor Yachia teach or suggest “a flat-woven tubular portion having opposed first and second tubular ends with a contiguous generally spherical bulbous woven section therebetween,” as is claimed in independent claims 1, 32, 49, and 79. Consequently, Applicants requests withdrawal of the rejection.

Moreover, in rejecting the previous claims over Núñez in view of Yachia, Office Action asserts:

the Examiner was relying on the teachings of Yachia solely for its structure in cross-section, a first diameter section, a bulbous section and a second diameter section on the opposite side or flanking the bulbous section. Second Nunez already provides the basis for modifying the prosthesis since a seamless region is disclosed to provide a change in diameter in the prosthesis.

Office Action pages 2-3.

The Office Action assumes that simply because Yachia discloses a certain structure, a person having ordinary skill in the art viewing Nuñez is capable of making that structure and would be motivated to make that structure. This assumption is erroneous, and as a result, the Office Action has failed to establish a *prima facie* case of obviousness.

A person having ordinary skill in the art would not look to Yachia to modify the prosthesis of Nuñez. Yachia teaches an endoluminal device that is suited to solve the alleged problem of the “inability of a graft to dynamically adjust to changes in the aorta’s diameter during systole and diastole...” Paragraph [0011]. The prosthesis of Nuñez “relates to flat-woven implantable tubular prostheses, and in particular endoluminal grafts...” Column 3, lines 54-55. The particular make-up of each of Yachia and Nuñez determines the shape and structure of each. Therefore, a person having ordinary skill in the art viewing Yachia would not be motivated to combine the structure of Yachia, which comprises filaments made of spring steel, Nitinol, and shape-memory alloy, with the woven-tubular soft-tissue prostheses of Nuñez.

For at least the foregoing reasons, Applicant requests withdrawal of the rejection.

Claims 9, 11, and 13

The Office Action rejected claims 9, 11, and 13 under 35 USC § 103 over Nuñez in view of Yachia in further view of Schmitt. Claims 9, 11, and 13 depend from claim 1. Any alleged teaching of Schmitt does not remedy the deficiencies of Nuñez and Yachia as discussed above with respect to claim 1. Claims 9, 11, and 13 are therefore patentable for at least the reasons discussed above with respect to claim 1 and Applicant accordingly requests withdrawal of the rejection.

Claims 30, 37, 57, 80, 83, 86, and 89

The Office Action rejected claims 30, 37, 57, 80, 83, 86, and 89 under 35 USC § 103 over Nuñez in view of Yachia in further view of De Paulis.

Claim 30 is herein amended to correct a typographical error.

Claims 80, 83, 86, and 89 are herein canceled without prejudice or disclaimer.

Claim 30 depends from claim 1, claim 37 depends from claim 32, and claim 57 depends from claim 49. Any alleged teaching of De Paulis does not remedy the deficiencies of Nuñez and Yachia as discussed above with respect to claims 1, 32 and 49. Claims 30, 37, and 57 are therefore patentable for at least the reasons discussed above with respect to claims 1, 32, and 49 and Applicant accordingly requests withdrawal of the rejection.

Conclusion

For at least the reasons presented above, Applicants submits that the application is in condition for allowance. Favorable consideration and early action to that effect are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: April 29, 2009

By: /James M. Urzedowski/
James M. Urzedowski
Registration No.: 48596

6640 Shady Oak Rd., Suite 400
Eden Prairie, MN 55344-7834
Telephone: (952) 563-3000
Facsimile: (952) 563-3001